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GOOGLE LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO**

ANIBAL RODRIGUEZ, *et al.* individually and
on behalf of all other similarly situated,

Plaintiffs,

vs

GOOGLE LLC, *et al.*

Defendant.

Case No. 3:20-CV-04688 RS

**DECLARATION OF EDUARDO E.
SANTACANA IN SUPPORT OF
PLAINTIFFS' ADMINISTRATIVE
MOTION TO SEAL (RE: PLAINTIFFS'
SUPPLEMENTAL SEARCH TERM
LETTER BRIEF)**

Judge: Hon. Alex G. Tse

Action Filed: July 14, 2020

Trial Date: Not Set

1 I, EDUARDO E. SANTACANA, declare:

2 1. I am an attorney licensed to practice law in the State of California and am a partner
3 with the law firm of Willkie Farr & Gallagher LLP, located at One Front Street, San Francisco,
4 California 94111, counsel for Defendant Google LLC (“Google”) in the above-captioned action.
5 Unless otherwise stated, the facts I set forth in this declaration are based on my personal
6 knowledge or knowledge I obtained through my review of corporate records or other
7 investigation. If called to testify as a witness, I could and would testify competently to such facts
8 under oath.

9 2. I submit this declaration in support of the Administrative Motion to Consider
10 Whether Another Party’s Material Should be Sealed filed by Plaintiffs. ECF No. 210. I am
11 making this declaration pursuant to Civil L.R. 79-5(f) as an attorney for the “Designating Party,”
12 as that term is used in that rule. Per the instructions provided on the Northern District of
13 California’s website, this declaration is drafted so that it does not contain confidential information
14 and does not need to be filed under seal. See <http://www.cand.uscourts.gov/ecf/underseal>.

15 3. On January 28, 2022, Plaintiffs filed their Administrative Motion to Seal, with
16 certain portions of Plaintiffs’ Letter Brief Response to the Court’s Request for Additional
17 Information Regarding Certain Search Terms (“Plaintiffs’ Supplemental Search Term Letter
18 Brief”) conditionally under seal. I have reviewed the document Plaintiffs seek to file under seal
19 pursuant to Civil Local Rule 79-5, an unredacted copy of which has been filed at ECF No. 210-2,
20 as well as the Civil Local Rules of this Court governing such motions.

21 4. Google only seeks to seal a portion of the information conditionally under seal.
22 Specifically, Google seeks to seal the unique hit count figures at (a) page 2 n.1, lines 2 and 3 (“***
23 hits”); (b) page 2 n.2, lines 4 and 5 (“returns *** hits”); (c) page 4, paragraph 2, lines 15 and 16
24 (“*** documents”). Google does not seek to seal any of the other information conditionally
25 under seal.

26 5. The unique hit counts that Google seeks to seal would not clarify the public’s
27 understanding of the dispute at issue before the Court. Further, because the Motion to Seal was
28 filed in connection with a non-dispositive motion concerning a discovery dispute over Google’s

ESI searches, “the usual presumption of the public’s right of access is rebutted.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). Accordingly, the lower “good cause” standard applies to the material Google seeks to seal. *Id.* at 1179–80.

6. Based on my review of the unredacted filings, there is good cause to protect all the information Google seeks to seal.

7. Google only seeks to seal the unique document hit count numbers that correspond to search terms identified in Google’s Exhibit C to the parties’ Joint Letter Brief re: Search Terms. ECF No. 201-3. The hit counts Google seeks to seal are the same ones in Exhibit C which is the subject of a pending Administrative Motion to Seal. *See* ECF No. 200.

8. Steve Ganem, a Google Group Product Manager, has reviewed the search terms and corresponding hit counts Google seeks to keep under seal in connection with Plaintiffs’ Administrative Motion to Seal Exhibit C to the parties’ Joint Letter Brief re: Search Terms. ECF Nos. 200, 207. Mr. Ganem’s declaration in support of that Motion to Seal explains why there is “good cause” to seal the unique hit counts. *See* Declaration of Steve Ganem in Support of Plaintiffs’ Administrative Motion to Seal, filed at ECF No. 207.

9. As described in Mr. Ganem’s declaration, the correlation of hit counts, search terms, and custodians discloses confidential and proprietary aspects of Google’s business structure, resource allocation, and strategy that Google does not discuss publicly. Understanding Google’s internal resource allocation and prioritization would allow a competitor to unfairly target Google’s business by optimizing their product strategy and offerings or undermining Google’s.

10. Courts have repeatedly found it appropriate to seal documents that contain “business information that might harm a litigant’s competitive standing, *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 589-99 (1978), or any other “commercially sensitive information,” *Palantir Techs. Inc. v. Abramowitz*, No. 19-CV-06879-BLF, 2021 WL 1925459, at *2 (N.D. Cal. Mar. 5, 2021). Good cause to seal is shown when a party seeks to seal materials that “contain[] confidential information about the operation of [the party’s] products and that public disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, No. C 12-1971 CW, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Courts in this

1 district have also determined that motions to seal may be granted as to confidential business
2 information that provides an “opportunity to obtain an advantage over competitors who do not
3 know or use it” because such information can be a trade secret. *See, e.g., In re Elec. Arts, Inc.*,
4 298 F. App’x 568, 569 (9th Cir. 2008) (sealing exhibit containing trade secrets and adopting
5 definition of trade secret as “any formula, pattern, device or compilation of information which is
6 used in one’s business, and which gives him an opportunity to obtain an advantage over
7 competitors who do not know or use it”); *see, e.g., United Tactical Sys., LLC v. Real Action*
8 *Paintball, Inc.*, 2015 WL 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against
9 sealing “that [the party] ha[s] not shown that the substance of the information . . . amounts to a
10 trade secret”). Public disclosure of the information Google seeks to keep under seal would harm
11 Google’s competitive standing it has earned through years of innovation and careful deliberation,
12 by revealing sensitive aspects of Google’s proprietary systems, strategies, and designs to Google’s
13 competitors. That alone is a proper basis to seal such information. *See, e.g., Free Range Content,*
14 *Inc. v. Google Inc.*, No. 14-cv-02329-BLF, ECF No. 192, at 6–8 (N.D. Cal. May 3, 2017)
15 (granting Google’s motion to seal certain sensitive business information).

16 11. Additionally, if the unique hit count numbers become public, Google is likely to be
17 prejudiced because other litigants adverse to Google will use the information to gain an unfair
18 advantage over Google in search term negotiations in those unrelated matters. This is not a
19 speculative threat. Indeed, at least one other plaintiff in an unrelated matter has sought cloned
20 discovery from this litigation and these Plaintiffs have sought discovery from another matter.
21 That cross-sharing of information to gain litigation advantage is not the type of “public interest”
22 courts had in mind when articulating the requirement that there be “good cause” to seal material
23 concerning non-dispositive matters. On the contrary, courts are concerned with the public’s
24 interest in “understanding the judicial process.” *Kamakana*, 447 F.3d at 1178. Sealing the unique
25 hit counts will not hinder the public’s understanding of the dispute at issue particularly because
26 Google is not seeking to seal the overall total hit counts for both parties’ respective proposals. If
27 information such as unique per term hit counts were routinely made public, that would chill future
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1 litigants' willingness to freely negotiate search terms for fear that specific hit counts will
2 eventually be used against the party in unrelated litigation.

3 12. Google has narrowly tailored its request to seal only extraneous, confidential,
4 proprietary material that is not necessary to aid the public's understanding of the discovery dispute
5 at issue.

6 13. Because Google's request to seal is narrowly tailored and limited to confidential
7 information that is not generally known to the public or Google's competitors that would harm
8 Google if it became public, Google respectfully requests that the Court order the portions of
9 Plaintiffs' Supplemental Search Term Letter Brief identified at paragraph 4 above remain under
10 seal.

11 Executed February 4, 2022, at San Francisco, California.

12 I declare under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct.

14 /s/ Eduardo E. Santacana
15 EDUARDO E. SANTACANA
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